vss

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

COMPANY PETITION NO.1037 OF 2001

In the matter of the Companies Act, 1956

And

In the matter of Tej Gaurav Farms Limited, having their regd. office at Tej Gaurav Building, Telang Road, Matunga (Central), Bombay - 400 019.

M/s.Quality Plywood & Hardware
287, Safalya, S.K. Bole Road
Near Portuguese Church, Dadar
Bombay - 400 028 ... Petitioners

Mr.P.B. Kapadia for Petitioners
Mr.K.Mody i/b V.Mistry & Co. for Respondents

CORAM: **SMT.NISHITA MHATRE, J.**

DATED: **DECEMBER 22, 2005**

P.C.:

. The Petitioners have filed the present Petition claiming an amount of Rs.83,081.40 as the "admitted" amount due and payable by the Respondent-Company on the basis of the invoice dated 30.4.1999. Interest @ 18% per annum is also demanded from 1.6.1999 upto the date of filing of the Petition. Accordingly, a total amount of Rs.1,12,910/- is payable to the Petitioners for the plywood supplied to the respondent-company. Copies of

the delivery challan No.090 dated 30.4.1999 and bill No.039 dated 30.4.1999 for an amount of Rs.831.018.40 are annexed to the Petition. The petitioners claim that the goods have been sold and delivered to the Respondent-company. According to the Petitioner, the respondent-company has received the goods and there is an endorsement on the challan/invoice indicating that the goods have been received. On the reverse of the challan, there is an endorsement with a rubber stamp "checked and verified, time-in: 7.30am date: 1.5.1999, signed- security officer, date - 1.5.1999". A statutory notice was issued to the Respondent-company on 11.5.2001 calling upon the Company to pay Rs.83,018.40 together with interest. A copy of the registered post A/D card bearing an acknowledgement is also annexed to the Petition, which according to the Petitioner is the acknowledgement of the receipt of the statutory notice by the Respondent-Company. The Petitioner has also annexed to the Petition a xerox copy of the proof that the statutory notice was sent Under Certificate of Posting to the same address as the address borne on the registered post.

2. An affidavit has been filed by the respondents denying that any amount was due and payable to the Petitioner. According to the Respondents, they had not

received any goods from the Petitioner-Company. Nor have they received the statutory notice and, therefore, according to the Petitioner, the claim in the Petition is false. The respondents have also annexed a letter issued by one S.M. Furniture indicating that payment for the plywood used by S.M. Furniture for the carpentry work carried out on the Respondents' establishment in Mahabaleshwar was made to the Petitioners and an amount of Rs.1,24,767.70 was paid to them on 15.3.1999. No further payment was required to be made, according to S.M. Furniture.

3. Mr.Kapadia, for the Petitioners, submits that the respondents have falsely denied that the goods were delivered to their establishment. These goods were delivered to the Respondent Company's establishment at Mahabaleshwar and were received by and on behalf of the respondents on 30.4.1999, according to the learned Advocate. He submits that the bill dated 30.4.1999 indicates that an amount of Rs.83,018.40 was due and payable to the Petitioners. He then points out that the annexure 1 to the affidavit in reply to the petition shows that besides the amount of Rs.1,24767.70, the respondent-company was expected to pay a certain balance amount which the respondent-company was well aware of. He points out that on 5.4.1999, which is the date on the

document annexed to the affidavit, an amount of Rs.93,898.70 was the balance amount payable to Quality Plywood and Jolly Timber Mart. According to him, this document which is annexed to the affidavit of the respondents indicates that there was a balance amount payable to the Petitioner and that amount was Rs.93,898.70. He then submits that though the statutory notice may not have been received by the respondents, it has been received by its sister concern and that would be "good service". Besides that according to the learned advocate, a copy of the notice was served Under Certificate of Posting which also would amount to good service. He submits that there is no reply to the statutory notice and hence, the Petition ought to be allowed.

4. Mr.Mody, appearing for the Respondent-Company, denies that the respondent-company ever received the goods mentioned in the invoice No.090 from the Petitioners. He submits that there is no endorsement on the invoice indicating that the goods were received by the respondent-company. The bill dated 30.4.1999 also, according to Mr.Mody, does not bear any indication that it was received by the respondent-company. He submits that the reliance placed by the Petitioners on the summary statement dated 5.4.1999 annexed to the

affidavit of the respondents does not support the case of the Petitioners. Mr.Mody points out that the summary is dated 5.4.1999 and shows that an amount of Rs.93,898.70 was payable to M/s.Quality Plywood, the Petitioners herein and Jolly Timber. The bill dated 30.4.1999 is for an amount of Rs.83,018.40. Therefore, this summary dated 5.4.1999 could not contain the figure for the bill of 30.4.1999. He submits that the xerox copy of the acknowledgement due card annexed to the Petition seeks to demonstrate that the statutory notice was received at the registered office of the company. However, it does not bear any endorsement for and on behalf of the company. He submits that the statutory notice must be served at the registered office of the Company by Registered Post acknowledgment due; sending it through Under Certificate of Posting would not suffice.

5. In my opinion, the company has raised a bonafide dispute regarding receipt of the goods. The documents annexed to the petition do not bear the signature of the Respondent-Company’s representative or the rubber stamp of the company. Therefore, it would be difficult to assume that the Company has received the goods from the Petitioner without there being any evidence on record. This position would be clear only when oral evidence is

led and not in a summary proceeding such as the present one. In my view, the petitioners would have to be relegated to filing a suit to claim the amount.

6. Furthermore, the endorsement on the acknowledgement due shows a rubber stamp of Suman Motels. This in my view, would not be good service of the statutory notice. The mere fact that Suman Motels is a sister concern of the Respondent-Company would not necessarily mean that there is compliance with sections 433 and 434 of the Companies Act. Therefore, once the statutory notice has not been served, as required by law, it would be difficult to allow the petition.

7. Apart from this, the reliance placed by the learned Advocate for the Petitioners on the summary statement dated 5.4.1999 annexed to the affidavit of the respondents is also of no avail to the Petitioners. The summary dated 5.4.1999 indicates that Rs.93,898.70 was the balance bill for the material supplied by Quality Plywood, the Petitioners herein and Jolly Timber Mart. However, this would not cover the bill dated 30.4.1999 on which basis the present petition has been filed. There is therefore, no admission of the debt as is

sought to be contended on behalf of the Petitioners. Therefore, in my view, the petition must be dismissed and the Petitioners have to be relegated to file a suit in the matter.

8. Petition is accordingly dismissed.